

**BEFORE THE STATE BOARD OF REGISTRATION  
FOR THE HEALING ARTS**

STATE BOARD OF REGISTRATION	)	
FOR THE HEALING ARTS,	)	
	)	
Board,	)	
	)	
v.	)	1999-000668
	)	
BERNARD P. JENSEN, M.D.	)	
6225 Main Street	)	
Argyle, NY 12809	)	
	)	
Licensee.	)	

**SETTLEMENT AGREEMENT**

Bernard P. Jensen, M.D., ("Licensee") and the State Board of Registration for the Healing Arts (the "Board") enter into this Agreement for the purpose of resolving the question of whether Dr. Jensen's license as a physician or surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo Supp. 1999.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing

commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law; Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claims, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo 1994, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it

survives in perpetuity even in the event that any court of law deems this Agreement, or any portion thereof, void or unenforceable.

5. The parties stipulate and agree that the order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620, and 621, RSMo, as amended.

#### I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

#### JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Bernard P. Jensen, M.D. ("Licensee") is licensed by the Board as a physician and surgeon, License Number MDR3K67, which license was first issued February 26, 1990. Licensee's certificate of registration is not current, and has not been current since January 31, 2000.

3. Licensee was also licensed as a physician in the State of New York, State Board for Professional Medical Conduct, number 145457. Said license was voluntarily surrendered effective September 1, 1999.

4. On or about July 1, 1999, the New York State Board for Professional Medical Conduct ("NY Board") issued its Consent and Surrender Order ("Order") which ordered Licensee to surrender his New York medical license by September 1, 1999. A copy of the Order, along with the Application for Consent Order and to Surrender License, are attached as Exhibit 1 and incorporated by reference as though fully set forth.

5. The basis for the Order was the New York Board's allegations of gross negligence and incompetency in the practice of medicine. Licensee did not contest specification 13 contained in the New York Board's Statement of Charges.

6. The Order issued by the New York Board is a final disciplinary action pursuant to § 334.100.2(8), RSMo. Supp. 1999.

#### JOINT PROPOSED CONCLUSIONS OF LAW

1. Cause exists to discipline Licensee's license pursuant to §334.100.2(8) RSMo Supp. 1999, which provides in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \* \*

(8) Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by another state, territory, federal agency or country, whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject to an investigation or while actually under investigation by any licensing authority, medical facility, branch of the armed forces of the United States of America, insurance company, court, agency of the state or federal government, or employers;

\* \* \*

2. Licensee's conduct, as established by the foregoing facts, falls within the intendment of §334.100.2(8), RSMo Supp. 1999.

3. Cause exists for the Board to take disciplinary action against Licensee's license under §334.100.2(8), RSMo Supp. 1999.

## II.

### JOINT AGREED ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the order entered by the State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 1994. This agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. MDR3K67, issued to Licensee is hereby VOLUNTARILY SURRENDERED in lieu of disciplinary action. Licensee understands

that this Agreement will be reported to the National Practitioner's Databank and the Federation of State Medical Boards as an action in lieu of discipline.

2. Within 10 days of the effective date of this Agreement, Licensee shall return all indicia of Missouri medical licensure to the Board, including but not limited to, his wall-hanging license and pocket card.

B. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC §1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, of from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

C. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

BOARD

Bernard P. Jensen  
Bernard P. Jensen, M.D.      Date

Tina Steinman 12/4/00  
Tina Steinman      Date  
Executive Director

Please forward  
the enclosed license  
documents to the  
board.  
Thank you!

12/28/00  
1359

JEREMIAH W. (JAY) NIXON  
Attorney General

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*James O. Ertle* 12/1/00  
James O. Ertle Date  
Assistant Attorney General  
Missouri Bar No. 49166

Broadway State Office Building  
Post Office Box 899  
Jefferson City, MO 65102  
(573) 751-4087  
(573) 751-5660 Facsimile

Attorneys for Board

EFFECTIVE THIS 4 DAY OF December, 2000.

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER : CONSENT AND  
OF : SURRENDER ORDER  
BERNARD JENSEN, M.D. : BPMC #  
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Upon the application of BERNARD JENSEN, M.D., (Respondent) for a consent order and to surrender his license as a physician in the State of New York, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are adopted; and it is further


ORDERED, that Respondent's license to practice medicine in New York shall be limited to preclude any patient contact, diagnosing, treating, prescribing or operating for any human condition as of the effective date of the order herein; and it is further

ORDERED, that Respondent shall surrender his New York license to practice medicine on or before September 1, 1999, and that no later than that date, Respondent's name shall be stricken from the roll of physicians in the State of New York; and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order via certified mail, whichever is earliest.

SO ORDERED

Dated: 7/1/99, 1999

  
WILLIAM P. DILLON, M.D.

Chairperson  
State Board for Professional Medical Conduct





STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
BERNARD JENSEN , M.D.

APPLICATION FOR  
: CONSENT ORDER  
and to  
: SURRENDER LICENSE  
: BPMC #99-151  
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BERNARD JENSEN, M.D., the Respondent, states that I was authorized to practice medicine in New York State on April 3, 1981, by the issuance of License No. 145457 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice in the State of New York. My address is P.O. Box 73, 6225 Main Street, Argyle, New York 12809.

I understand that I have been charged with fifteen specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A. I deny Specifications One through Twelve, Fourteen and Fifteen, but in satisfaction of all charges, I do not contest Specification Thirteen.

I am applying to the State Board for Professional Medical Conduct for an Order (henceforth "Consent and Surrender Order"), limiting my ability to practice medicine in New York immediately, and subsequently (effective on or before September 1, 1999) surrendering my license to practice medicine in the State of New York.

I agree that beginning with the effective date of the Order herein (hereafter called the "Consent Date"), my license to practice medicine in the State of New York shall be limited, pursuant to section 230-a of the Public Health Law, to preclude the practice of medicine. I shall be precluded from patient contact, diagnosing,

treating, prescribing or operating for any human condition.

I further agree that the Consent Order for which I hereby apply shall impose a condition that effective on the Consent Date, I shall change my registration status to "inactive" with the New York State Education Department Division of Professional Licensing Services and provide proof of such change to the Director of the Office of Professional Medical Conduct within thirty days of the Consent Date. Failure to comply with such condition shall constitute misconduct as defined by New York State Education Law section 6530(29).

I further agree that I shall surrender my license effective on or before September 1, 1999.

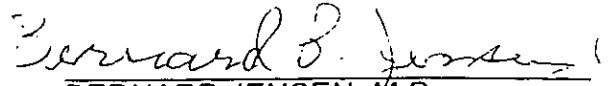
Finally, I agree to comply with the terms of medical practice cessation attached hereto as Exhibit B.

I make this application to the State Board for Professional Medical Conduct (Board) and request that it be granted.

I understand that, in the event that the application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me.


I make this application to the Board and request that it be granted by execution by the Chairperson of the Board of the attached order. I agree that, in the event the Board grants my application, an order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me as of the date I surrender my license, or September 1, 1999, whichever occurs first.

I am making this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the Board's granting of this application, I fully, freely waive any right I may have to appeal or otherwise challenge the validity of the said consent and surrender order.

  
BERNARD JENSEN, M.D.  
Respondent

The undersigned agree to the attached application of the Respondent for a consent and surrender order for Respondent's license to practice medicine in the State of New York.


Date: June 16, 1999

  
T. LAWRENCE TABAK, ESQ.  
Attorney for Respondent

Date: June 22, 1999

  
MICHAEL A. HISER, ESQ.  
Associate Counsel  
Bureau of Professional  
Medical Conduct

Date: June 28, 1999

  
ANNE F. SAILE  
Director, Office of  
Professional Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER : STATEMENT  
OF : OF  
BERNARD P. JENSEN, M.D. : CHARGES

-----X

BERNARD P. JENSEN, M.D., the Respondent, was authorized to practice medicine in New York State on April 3, 1981 by the issuance of license number 145457 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, (a list of patients' names is included as appendix A) a sixty-five year old female, on or about August 13, 1998 in the Emergency Room of Mary McClellan Hospital, One Myrtle Avenue, Cambridge, New York 12816 (hereinafter MMH). Patient A presented with a chief complaint of weakness for three days and a fever. Respondent's medical care of Patient A failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to obtain and/or document an adequate history of the patient.
2. Respondent failed to perform and/or document an adequate physical examination of the patient.
3. Respondent failed to order adequate diagnostic tests.

including a blood culture, despite indications.

B. Respondent treated Patient B, a sixty-five year old female, in the Emergency Room of MMH on or about May 21, 1995. Patient B presented with a complaint of swelling to the left side of her neck and face following a bee sting and a history of allergy to bee stings. Respondent's medical care of Patient B failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to perform and/or document an adequate physical examination of Patient B, including an evaluation of the patient's cardio-respiratory status.
2. Respondent failed to adequately treat Patient B by, among other things, removing the bee stinger prior to discharging the patient.

C. Respondent treated Patient C, a three year old male, in the Emergency Room of MMH on or about November 19, 1997. Patient C presented following a motor vehicle accident approximately one hour earlier with a chief complaint of abdominal pain. Respondent's medical care of Patient C failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to perform and/or document an adequate physical examination of the patient.
2. Respondent failed to order adequate diagnostic tests, including a urinalysis, complete blood count, platelet, and/or serum chemistries.
3. Respondent failed to obtain appropriate consultations prior to discharging Patient C on November 19, 1997, including a surgical and/or pediatric consultation.

D. Respondent treated Patient D, a thirty-one year old female, on or about October 7, 1994 in the Emergency Room of MMH.

Patient D, two months pregnant, presented to the Emergency Department with a complaint of severe lower abdominal pain, and nausea. Respondent's medical care of Patient D failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to obtain and/or document an adequate history of the patient.
2. Respondent failed to perform and/or document an adequate physical examination.
3. Respondent failed to order adequate diagnostic tests, including, but not limited to, a quantitative HCG and a pelvic ultrasound.
4. Respondent failed to obtain appropriate consultations prior to discharging Patient D on October 7, 1994, including a surgical and/or gynecologic consultation.
5. Respondent discharged Patient D despite failing to reassess the patient's vital signs or abdominal examination, absence of a quantitative HCG or pelvic ultrasound, and without scheduling formal follow-up or ongoing care.

E. Respondent treated Patient E, a forty-seven year old male, on or about November 3, 1992, at Emergency Department of the Saratoga Hospital, Saratoga, New York. Patient E presented with a complaint of pounding headache. Respondent's medical care of Patient E failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to obtain and/or document an adequate history.
2. Respondent failed to perform and/or document an adequate neurologic examination.
3. Respondent failed to adequately rule out the necessity of a CT scan of patient's head.

## SPECIFICATIONS OF MISCONDUCT

### FIRST SPECIFICATION

#### FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. The facts in Paragraphs A and A.2 and/or B and B.1.

### SECOND SPECIFICATION

#### MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

2. The facts in Paragraphs A and A.2 and/or B and B.1.

### THIRD THROUGH SEVENTH SPECIFICATIONS

#### GROSS NEGLIGENCE

Respondent is charged with professional misconduct as defined in N.Y. Education Law §6530(4) by reason of his practicing the profession of medicine with gross negligence, in

that Petitioner charges that Respondent committed one of the following:

3. The facts in Paragraphs A and A.1, A and A.2 and/or A and A.3.
4. The facts in paragraphs B and B.1, and/or B and B.2.
5. The facts in paragraphs C and C.1, C and C.2 and/or C and C.3.
6. The facts in paragraphs D and D.1, D and D.2, D and D.3, D and D.4, and/or D and D.5.
7. The facts in paragraphs E and E.1, E and E.2 and/or E and E.3.

#### EIGHTH THROUGH TWELFTH SPECIFICATIONS

##### GROSS INCOMPETENCE

Respondent is charged with professional misconduct as defined in N.Y. Education Law §6530(6) by reason of his practicing the profession of medicine with gross incompetence, in that Petitioner charges that Respondent committed one of the following:

8. The facts in Paragraphs A and A.1, A and A.2 and/or A and A.3.
9. The facts in paragraphs B and B.1, and/or B and B.2.
10. The facts in paragraphs C and C.1, C and C.2 and/or C and C.3.
11. The facts in paragraphs D and D.1, D and D.2, D and D.3, D and D.4, and/or D and D.5.
12. The facts in paragraphs E and E.1, E and E.2 and/or E



and E.3.

**THIRTEENTH SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with professional misconduct as defined in N.Y. Education Law §6530(3) by reason of his practicing the profession of medicine with negligence on more than one occasion, in that Petitioner charges that Respondent committed two or more of the following:

13. The facts in Paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, E and E.1, E and E.2 and/or E and E.3.

**FOURTEENTH SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with professional misconduct as defined in N.Y. Education Law §6530(3) by reason of his practicing the profession of medicine with incompetence on more than one occasion, in that Petitioner charges that Respondent committed two or more of the following:

14. The facts in Paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, E and E.1, E and E.2 and/or E and E.3.

FIFTEENTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(32) by reason that the Respondent failed to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient in that Petitioner charges: /

15. The facts in Paragraphs A and A.1, A and A.2, B and B.1, C and C.1, D and D.1, D and D.2, E and E.1, and/or E and E.2.

Dated: *June 22,* 1999  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical  
Conduct

FOR FURTHER INFORMATION:  
MICHAEL A. HISER  
ASSOCIATE COUNSEL  
(518) 473-4282

## EXHIBIT B

### TERMS OF MEDICAL PRACTICE CESSATION

1. Respondent shall, as of the effective date of the order herein, cease and desist from engaging in the practice of medicine in accordance with the terms of the Order. In addition, Respondent shall permanently refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall within ten (10) days of the Order notify his patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient and/or his or her representative requests a copy of the patient's medical record or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of their inability to pay.
4. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance privileges to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA.
5. Respondent shall within fifteen (15) days return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall cause all prescription pads bearing his name to be destroyed. If no other licensee is providing services at his practice location, all medications shall be properly disposed.
6. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings by which his eligibility to practice is represented.
7. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered by himself or others while barred from engaging in the practice of medicine. Respondent may be compensated for the

reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.

8. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine he shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.

9. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230-a of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Respondent is found guilty and may include revocation of a suspended license.